

OGBENI
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THIS JUDGEMENT CANNOT STAND

The report of the split judgement of the Osun Election Petition Tribunal last Friday which nullified the election of Governor Gboyega Oyetola came to us as a rude shock.

We have the highest regards for the judiciary and we will continue to have high regards for the revered institution. However, we regret to note that the decisions in the majority judgement, as can be seen from our subsequent observations, is strange to law and common sense. It certainly does not support the cause of electoral justice and may constitute the death knell for properly conducted elections. Therefore, with all sense of responsibility, we reject the majority judgment and believe that it will not stand scrutiny at the appellate court.

Two of the three judges on the panel in the majority judgment nullified elections in 17 polling units, and proceeded to calculate election results on their own to declare Senator Ademola Nurudeen Adeleke of the People's Democratic Party (PDP) as the winner of the elections conducted in September 2018. The two judges also cancelled the supplementary election held on September 27, 2018 and awarded victory to the PDP candidate.

In nullifying the elections in the 17 polling units, the majority judgment predicated it on what is regarded as "substantial non-compliance" with the provisions of the Electoral Act 2010. The said non-compliance, according to the judgment, borders on the failure of INEC's appointed presiding officers to record accreditation and ballot accounting on the result forms in the 17 polling units.

There was no evidence of any act known to render election null and void in an election petition such as over voting, non-accreditation, ballot box stuffing etc. This much was highlighted in the dissenting judgment of the Chairman of the Tribunal in disagreeing with the majority decision.

It is interesting to note that there are 3,010 polling units in Osun State. Aside the seven units where supplementary election were ordered due to the margin of lead principles (derived from sections 26 and 53 of the Electoral Act (2010) as well as INEC regulations and guidelines for the conduct of elections), elections were concluded and results announced accordingly. Surprisingly, majority members of the tribunal nullified the elections in 17 polling units merely on the basis that some columns of result forms were not filled and went further to deduct from APC's 2,029 votes and PDP's 1246. With these deductions, it declared PDP winner of the elections.

It is general knowledge in that elections are not nullified based on non-compliance alone. A petitioner who alleges non-compliance with the provisions of this Electoral Act must clearly establish by evidence that the non-compliance has affected the result of the election. The petitioner must not only show substantial non-compliance but also the figures that the non-compliance attracted or omitted. Surprisingly, this was not the case in respect of the Osun Election Tribunal. The witnesses of the petitioners in all the 17 polling units agreed that though there were non-recording of the columns for accreditation and ballot accounting, this did not affect the votes of the parties as the actual votes scored by the various parties were duly recorded on the forms. The PDP agents admitted that they signed the result forms and obtained carbon copies.

It must be noted that APC and its candidate were not accused of any electoral malfeasance in the 17 polling units. Rather, INEC, a common agent of PDP and APC (and indeed, all the political parties), which neither of the parties has control over was merely accused of not complying with its manual for the election, when the presiding officers appointed for the election failed to make the entries. Therefore, the most relevant question one would pose here is: should the tribunal allow APC to suffer as a result of the mistakes or omissions occasioned by the INEC staff? Certainly, no! It is rather shocking to good conscience that APC will be penalized for the error or mistake of INEC and its staff in this regard, even when there is evidence of validly conducted and concluded elections in the 17 polling units, especially where no miscarriage of justice has been shown to have been occasioned.

Can one therefore say that the failure to record the data for accreditation and ballot accounting in 17 units – that is 0.56 per cent – out of the 3,003 units, amounts to substantial non-compliance? Election is a process. The witnesses of

the petitioners affirmed that there was accreditation and only accredited voters were allowed to vote; that at the close of voting, the ballot papers were sorted, counted and results announced; that the results indicating the score of the parties were duly entered for the contesting political parties. The only non-compliance was the failure to make some entry in respect of accreditation and ballot papers on the results sheets. This cannot amount to substantial non-compliance because the results of the elections were not in any way affected.

Aside the issue of the nullified election in 17 polling units, we are shocked that the majority judgment held that the rerun election conducted in seven polling units on the 27th of September 2018 was illegal, null and void. It is interesting to note that while the majority judgment initially held that the rerun election was valid which birthed the petition, it made a dramatic U-turn to subsequently annul same.

Equally shocking are the reasons advanced by the two justices. They advanced the proposition that elections in the seven polling units were cancelled by the state collation officer. This was not the case. There were no elections in the seven polling units, and if there was any, the onus was on the Petitioners. This onus was not discharged in anyway as no results was tendered.

The state collation officer in compliance with the margin of lead principle rightly reasoned that the outcomes of the elections could not be determined without conducted polls in the affected elections. Hence the commission's decision to conduct supplementary elections in line with these principles.

The principle behind this is impeccable. Supplementary election is meant to bring inclusiveness; to prevent the spectacle of disenfranchisement of citizens; and give them a voice and choice in choosing their leaders. This is the very soul of the democratic project. Election cannot be said to be democratic if a large swath of people whose choice could have made a difference were left out of the exercise.

Osun was not the first place where this rule would be applied. It had already been used five times prior to Osun. First, in Anambra (2011) between Prof Dora Akunyili and Dr Chris Ngige; second in Anambra again (2013) between Governor Willie Obiano and Dr Tony Nwoye; third in Bayelsa (2015) between Governor Seriake Dickson and former Governor Timipre Sylva; fourth in Kogi (2015) between former Governor Idris Wada and Governor Yahaya Bello, and lastly in Imo (2015) between Governor Rochas Okorocha and Honourable Emeka Ihedioha.

In all these instances, supplementary elections were held in similar circumstances. For one reason or the other, elections were cancelled and the margins of leading were less than the total number of voters in constituencies where votes were cancelled. In the Kogi case, the matter got up to the Supreme Court where the apex court affirmed the power of INEC to declare election inconclusive and conduct supplementary ones.

Therefore, INEC had the vires to conduct another election in the face of the margin of win during first election on 22nd September. We find it gratifying that the Chairman of the Tribunal recognized these principles of law and concluded that section 140 (2) does not permit the Tribunal to deduct votes and declare a winner.

It is in view of the foregoing that we are going to vigorously pursue appeal against the judgement. We have the firm confidence that it will be overturned.

We urge our members, supporters, admirers and lovers of justice who have been outraged by this verdict to be calm and unruffled. It cannot stand. As they say in law, you cannot build something on nothing.

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Power is responsibility